

**STATE OF WEST VIRGINIA
WEST VIRGINIA SECURITIES COMMISSION
BEFORE THE SECURITIES COMMISSIONER
CHARLESTON, WEST VIRGINIA 25305**

ORDER NO. 0001

**Definition of Sales Literature or
Advertising Communication**

Pursuant to the authority granted to him by Chapter 32, of the West Virginia Code, 1931, as amended ("The West Virginia Uniform Securities Act"), hereinafter sometimes referred to as the "Act", and particularly Chapter 32, Article 4, Section 412 of the Act, [the] Commissioner of Securities ("Commissioner") has reviewed Chapter 32, Article 4, Section 403 of the Act.

Pursuant to said review, the Commissioner is of the opinion and finds as follows:

FINDINGS OF FACT

1. Chapter 32, Article 4, Section 403 of the Act provides:

Any prospectus, pamphlet, circular, form letter, advertisement or any other sales literature or advertising communication addressed or intended for distribution to prospective investors, including clients or prospective clients of an investment adviser, shall be filed with the commissioner before it is used, disseminated or distributed unless the security or transaction is exempted by section 402.

2. The term "sales literature or advertising communication" is not defined in the Act.
3. Investment Advisers regularly fail to file all appropriate sales and advertising material.
4. This Order is necessary and appropriate in the public interest.

CONCLUSIONS OF LAW

1. Chapter 32, Article 4, Section 412(a) of the Act provides that the Commissioner may from time to time make orders as necessary to carry out the provisions of the Act.
2. This Order is consistent with the purposes fairly intended by the policies and provisions of the Act as required in Chapter 32, Article 4, Section 412(b) of the Act.

NOW THEREFORE IT IS HEREBY ORDERED THAT:

1. For the purpose of complying with Chapter 32, Article 4, Section 403, the term "sales literature or advertising communication" includes, but is not limited to, each of the following categories:
 - a. Business Materials: Any materials used in the regular course of business that in any way promotes, markets or publicizes the investment advisory service. Examples include, but are not limited to, letterhead and business cards.
 - b. Correspondence: Any written letter, email or instant message delivered within a thirty (30) day calendar-day period to two (2) or more current or prospective clients that in any way promotes, markets or publicizes the investment advisory service. An example includes, but is not limited to, correspondence offering "free lunch" seminars.
 - c. General Advertisement: Any material, other than independently prepared reprints and institutional sales material, that is published or used in any electronic or other public media that promotes, markets or publicizes the investment adviser and/or its services. Examples include, but are not limited to, newspaper and magazine materials, billboards, television and radio commercials, and internet web sites.
 - d. Independently Prepared Reprint: A reprint or excerpt of an article by a publisher that is not affiliated with the investment adviser; that is not commissioned by the

investment adviser; that has not been altered in its contents by the investment adviser, and that contains content related to the services offered by the investment adviser.

- e. Institutional Sales Material: Any communication that is distributed solely to institutional investors that promotes, markets or publicizes the services offered by the investment adviser.
- f. Public Appearance: Any materials used for participation in a seminar, forum (including an electronic forum), radio or television interviews, or any public speaking activity or other public appearance that promotes, markets or publicizes the investment advisory services. Examples include, but are not limited to, prepared remarks, power point presentations, or any visual aid.
- g. Sales Material: Any written or electronic communication with the public that does not meet the definition of a general advertisement, independently prepared reprint, institutional sales material, and correspondence that promotes, markets or publicizes the investment adviser and/or its services. Examples include, but are not limited to, brochures, circulars, flyers, press releases, and reprints that are not independently prepared.

2. This Order shall remain in effect until modified or vacated by the Commissioner.

Entered this 10th day of June, 2009.

Glen B. Gainer, III
State Auditor
Commissioner of Securities

By: Lisa A. Hopkins
General Counsel
Senior Deputy Commissioner of Securities